

FILED  
BILLINGS DIV.

IN THE UNITED STATES DISTRICT COURT

2007 AUG 7 PM 1 06

FOR THE DISTRICT OF MONTANA

PATRICK E. DUFFY, CLERK

BY \_\_\_\_\_  
DEPUTY CLERK

BILLINGS DIVISION

DAVID ERICKSON, individually  
and as Personal Representative of the  
ESTATE OF GINA ERICKSON, and  
STEPHANIE ERICKSON,

Plaintiffs,

vs.

FORD MOTOR COMPANY, a Delaware  
Corporation,

Defendant.

CV-04-88-BU-RFC

ORDER

On June 18, 2007, United States Magistrate Judge Carolyn Ostby entered her Findings and Recommendation. Magistrate Judge Ostby recommends that Ford's motion for partial summary judgment should be granted as to Plaintiffs' claim that Ford should have used laminated glass rather than tempered glass in the side window of the Ford Bronco at issue.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Plaintiffs filed objections on July 2, 2007. Defendant responded to Plaintiffs' objections on July 23, 2007. Plaintiffs' objections are not well taken.

Ford contends that Plaintiffs' defective glass claim is impliedly preempted because it would create a conflict between federal and state law. In particular, Ford claims that Plaintiffs' state law-based tort glass claim would "stand as an obstacle to the accomplishment and execution

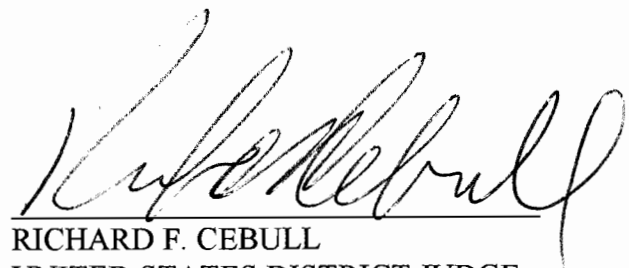
of the full purpose and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Bradley v. Harris Research*, 275 F.3d 883, 889-90 (9th Cir. 2001). If successful, Plaintiffs’ state claim would impose liability for the use of tempered glass in side windows, whereas federal law found Safety Standard 205 permits such application. In *Geier v. American Honda Motor Co., Inc.*, 529 U.S. 861 (2000), the Court held that ordinary preemption principles apply and the tort action was preempted. Each court that has considered this precise issue has concluded that under the principles established in *Geier*, the state tort action cannot proceed. For the same reasons, this Court reaches the same conclusion, and agrees with Magistrate Judge Ostby’s recommendation.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and **HEREBY ORDERS** they be adopted in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Ford’s motion for partial summary judgment [*doc. #71*] is **GRANTED** as to Plaintiffs’ claim that Ford should have used laminated glass rather than tempered glass in the side window of the Ford Bronco at issue.

The Clerk of Court shall notify the parties of the making of this Order.

DATED this 7<sup>th</sup> day of August, 2007.

  
RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE